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Utah State Legislature

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November 5, 2015

Scott K. Jenkins, Senate Chair
Lee B. Perry, House Chair
Natural Resources, Agriculture, and Environment Interim Committee
Utah State Capitol Complex
W210 House Building
Salt Lake City, Utah 84114

SUBJECT: State Policy Governing Water Heaters

Dear Chairs:

In its October 30 meeting, the Administrative Rules Review Committee discussed whether a proposed Air Quality Board administrative rule (R307-230, NOx Emission Limits for Natural Gas-Fired Water Heaters) conflicts with state statute. The Air Quality Board has between now and January 29 to either make the rule effective as written, make further changes to the rule, or let the rule filing lapse. As currently written, the proposed rule requires that, beginning November 1, 2017, water heaters installed in Utah comply with certain NOx emission limits.

The committee heard testimony from representatives of the Utah Home Builders Association and the Utah Association of Realtors, who argued that the proposed administrative rule conflicts with the State Construction Code, as adopted in Title 15A, State Construction and Fire Codes Act. The committee also heard testimony from the Director of the Division of Air Quality, who argued that Utah Code 19-2-104(1)(a) grants authority for the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."

Members of the Administrative Rules Review Committee expressed concern that the rule touched upon policy issues that should be addressed by the Legislature, not by administrative rule. In light of those concerns, the committee voted to recommend the Legislature not reauthorize proposed R307-230.

Because of this proposed rule's impact on citizens, the business community, and air quality, we want to inform you of the committee's discussion and action, and recommend that you consider addressing the underlying policy issues before the 2016 General Session.

Please let us know if you have any questions regarding the Administrative Rules Review Committee's discussions.

Sincerely,

Howard A. Stephenson, Senate Chair
Administrative Rules Review Committee

Curtis Oda, House Chair
Administrative Rules Review Committee